FILED
SEP 9 - 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 04-1084

IN THE
Supreme Court of the United States

ALBERTO R. GONZALES,
ATTORNEY GENERAL, *et al.*,
Petitioners,

v.

O CENTRO ESPIRITA BENEFICIENTE
UNIÃO DO VEGETAL (UDV), *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE COUNCIL ON SPIRITUAL PRACTICES, CARL A. P. RUCK, PH.D., HUSTON SMITH, PH.D., KENNETH SMITH, D.D., AND ROGER WALSH, M.D., PH.D, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST*

As more completely described in an Appendix to this Brief, *Amici* include scholars of religion, a longtime seminary president, and an organization committed to the scientific study of religion and primary religious practices. *Amici* have substantial expertise relating to the specific practice at issue in this case – the UDV's ritual ingestion of its sacrament *hoasca*; similar practices of other faiths; and the place these practices occupy in the wider context of religious practice and belief.

A central theme of the work of *Amici* is that there are important commonalities between sometimes foreign-seeming religious traditions and those regarded as within the American "mainstream," and that (consistent with premise of the federal statute here at issue) the respect to which religious practice is entitled should not depend on whether the tradition with which it is associated is long-established in this country, whether its adherents are numerous or influential, or whether its rituals and belief systems are appealing or familiar. In that spirit, *Amici* are concerned that the resolution of the religiously-sensitive issues presented here be informed by a full understanding of the specific religious practice at issue and that practice's place in broader religious and historical context.

SUMMARY OF ARGUMENT

The religious use of plant hallucinogens, or *entheogens* as they are increasingly known in the academic literature, stretches back millennia and across the globe.[1] It formed a part

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*No counsel for any party authored any part of this brief. No person or entity other than *Amici* and their counsel made a monetary contribution toward submission of this brief, which is filed with the parties' consent.

[1]The term *entheogen*, meaning, roughly, "God-evoking," was coined nearly three decades ago by a group of scholars, including *amicus* Carl A.P. Ruck, to avoid the implication that the religious experiences of individuals who ingest such plants are "hallucinations." As explained *infra*, *Amici* recognize that the term 'hallucinogen' retains wide currency and has been used in these proceedings to describe *hoasca*, but nonetheless hope that it will be used with sensitivity to the prejudice it often evokes.

of the famous Greek Mystery Rites at Eleusis, is praised in the ancient Indo-Aryan religious text *Rig Veda*, and was and remains an integral part of indigenous religious ceremonies in Mesoamerica and West Africa. Peyote is the well-known sacrament of the Native American Church, and *ayahuasca* has served in South American religious practices from pre-Columbian times to the present. *Hoasca* is likewise indisputably central to the UDV faiti , which would be damaged irreparably were the government's attempt to prohibit its sacrament to be approved.

The purpose of entheogen use in religious ceremonies is similar to the purpose of many other intensive religious practices: to enhance spiritual awareness or occasion direct experience of the divine. In this regard, UDV's use of *hoasca* is similar to practices such as meditation, intensive prayer, and fasting, which form a crucial part of many religious traditions.

UDV's ceremonial *hoasca* use is similar to other religious practice in a further respect: like fasting, refusing medical treatment, consuming alcohol, pilgrimages, and many other time-honored practices, it carries some risk of harm to the individuals who engage in it. The risks associated with the UDV's ritual *hoasca* use are on par with (and in some instances far less serious than) the risks entailed by these other practices – risks society has long permitted adherents to incur for religious reasons. And, as in other religious traditions, UDV's structures operate protectively, counteracting risks that might attend casual or unsupervised use.

Amici do no not contend that government's interest in preventing self-harm could never be "compelling," let alone that religiously-motivated drug use is entitled to blanket protection (such a rule is contradicted by the text of RFRA, which contemplates fact-specific, case-by-base adjudication). But the district court in this case was clearly correct to conclude that the relatively low and contained risks to UDV members through their use of *hoasca* are insufficiently compelling to prohibit them from practicing their religion. In

view of that sound conclusion and because (as found by the district court and explained in the briefs of Respondents and other *amici*), the government failed to establish that any other compelling interest requires a ban, the judgment below should be affirmed.

ARGUMENT

I. UDV's Use of *Hoasca* Is a Recognized and Venerable Form of Religious Worship, Similar to Religious Practices Followed Throughout History and Across the Globe.

O Centro Espirita Beneficiente União do Vegetal ("UDV") is a small religious group, with about 130 members in the United States and 8,000 in Brazil, where it originated. See 342 F.3d at 1174 (panel opinion). At guided religious ceremonies lasting about four hours, which include the recitation of sacred law, singing, and religious teaching, UDV members ingest *hoasca*. *Id.*

Hoasca, which in the Quechua Indian language means "vine of the soul" or "vision vine," is a tea made by brewing together two plants indigenous to Brazil. *Id.* One of those plants, *psychotria viridis*, contains dimethyltryptamine (DMT). DMT is considered a hallucinogen which, when ingested as part of the tea, will typically "significantly alter [the] consciousness" of UDV members. *Id.* at 1174-75.

Because UDV's practice has aspects that likely strike even religiously observant Americans as unfamiliar, it is important to situate it in broader context. Every major religious tradition recognizes some interpretation of primary religious experience, variously called "cosmic or mystic consciousness" W. JAMES, THE VARIETIES OF RELIGIOUS EXPERIENCE 307-13 (New Am. Lib. 1958), Buddha Consciousness, Christ Consciousness, unitive experience, and beatific vision.

Many traditions regard such experience as something that can, does, or should occur for only a subset of believers; in some traditions, there is dispute about the licitness or safety of seeking out primary experience; while others encourage all or

most of their practitioners to seek direct experience of the divine. Some religions contain within them separate or partly separate mystical traditions, such as Sufism within Islam, Kabbalah and Hasidism within Judaism, and some Catholic monastic orders.

Across the world and over time, people of many faiths have identified and developed practices aimed at increasing their likelihood of occasioning heightened spiritual awareness, managing risks of adverse effects, and channeling what is gained from the states into enduring benefits. Some of these practices involve intensive prayer, meditation, sleep deprivation, or fasting; some include the ingestion of entheogenic substances.

A. Since Antiquity, Many Cultures Have Used Plant Entheogens in Religious Rituals.

The anthropological and archeological record shows that human beings had discovered plants with entheogenic properties long before the dawn of recorded history. See, *e.g.*, Merlin, *Archaelogical Evidence for the Tradition of Psychoactive Plant Use In the Old World*, 57 ECON. BOTANY 295 (2003). The ingestion of those plants was incorporated into, and regulated by, various religious traditions. Those traditions provided conceptual frameworks or belief systems that helped prepare participants for the powerful experiences they might undergo, while the experiences in turn helped to shape and sustain the belief systems. See de Rios, *Historical and Cross-Cultural Perspectives on the Use of Hallucinogens in Spiritual Practice*, in *Symposium on Hallucinogens and Religion: Historical to Scientific Perspectives* in PROCEEDINGS OF 63D ANNUAL SCIENTIFIC MEETING OF THE COLLEGE ON PROBLEMS OF DRUG DEPENDENCE, NIDA RESEARCH MONOGRAPH 182, U.S. DEP'T HEALTH & HUM. SERVS. (2002) (hereafter, "*Symposium on Hallucinogens and Religion*") at 119. Within their respective cultures, such practices have not been considered deviant; to the contrary, they have typically been afforded respect and often reverence. Griffiths & de Wit,

Symposium on Hallucinogens & Religion at 116 ("[P]sychoactive plants having hallucinogenic effects have been valued for thousands of years in many cultures, in structured contexts, for their ability to facilitate spiritual (*i.e.*, mystical/transcendent) experiences"). Some examples follow.

1. The Eleusinian Mysteries of Ancient Greece

For some 2,000 years, people throughout the civilized ancient world were initiated into the Mysteries at Eleusis, near Athens. G. MYLONAS, ELEUSIS AND THE ELEUSINIAN MYSTERIES 226 (1961). "The evocation of a beatific vision at Eleusis was an annual venture * * * * Under conditions which were kept strictly secret * * * the venture succeeded time and time again." C. KERÉNYI, ELEUSIS 112 (1967). Its initiates included Pythagoras, Socrates, Pausanias, and Plotinus. See Thackara, *The Ancient Mysteries: A Great Light, A Force for Good*, Sunrise Magazine (Nov. 1978).[2]

These Mysteries, held each year, involved instruction, festivals, purifications, fasting, and the consumption of a brew known as *kykeon*. Initiates signaled that they were prepared to enter the final stages of the rites by reciting, "I have fasted, I have drunk the *kykeon*." KERÉNYI, ELEUSIS at 177. "[T]he initiated [did] not learn anything so much as feel certain emotions and [be] put into a certain frame of mind." L. FARNELL, 3 THE CULTS OF THE GREEK STATES 192 (1907). Each participant "went through certain experiences which left them perhaps filled with awe and even confusion, but also overflowing with bliss and joy." MYLONAS, ELEUSIS at 261.

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[2]Cicero rated the Mysteries Athens's greatest contribution to civilization:

> For among the many excellent and indeed divine institutions which your Athens has brought forth and contributed to human life, none, in my opinion, is better than those mysteries. For by their means we have been brought out of our barbarous and savage mode of life and educated and refined to a state of civilization; and as the rites are called 'initiations,' so in very truth we have learned from them the beginnings of life, and have gained the power not only to live happily, but also to die with a better hope.

CICERO, II LAWS, xiv, 36.

What long intrigued scholars was how, to participants sophisticated in rhetoric and theater, any speech or ritual could have the scarcely speakable, life-changing impact the Mysteries were so often reported to have. See, *e.g.*, Eyer, *Psychedelic Effects and the Eleusinian Mysteries*, 2 ALEXANDRIA 65 (1993) (describing effects of the Rites and puzzlement about their cause).

In 1978, Dr. Carl Ruck, Professor of Classical Studies at Boston University and an *amicus* on this brief, co-authored a landmark study concluding that the *kykeon*, a brew of barley, water, and pennyroyal, also contained potent psychoactives derived from ergot, a fungus that grows on grain. R. G. WASSON, A. HOFMANN & C.A.P. RUCK, THE ROAD TO ELEUSIS (1978). While some later scholars have disagreed as to the identity of the particular psychoactive, the core assertion remains unchallenged – the pivotal moment of the most important mystery ritual of the Classical world involved imbibing an entheogenic drink, which, within a rich, highly developed ritual and cultural context, occasioned life-changing religious experience for many participants. See Luck, *Book Review, The Road to Eleusis*, 122.1 AM. J. PHILOL. 135 (2001) (reviewing new edition).

2. India's *Soma*

One of the oldest religious texts known, the *Rig veda*, praises a substance called *soma*. Dandekar, *Vedas*, 14 ENCYCLOPEDIA OF RELIGION at 9550 (describing historical period of the *Rig Veda* as 2000-1100 B.C.E.). Of the text's 1,028 Sanskrit hymns, some 120 are devoted to extolling the virtues of *soma*; additional positive references are scattered throughout the other hymns. The identity of this revered plant was lost thousands of years ago.

In 1968, the ethnobotanist Gordon Wasson published research identifying *soma* as the psychoactive mushroom *amanita muscaria*. R.G. WASSON, SOMA: DIVINE MUSHROOM OF IMMORTALITY. Although scholars continue to debate which psychoactive plant may have been used, see, *e.g.*, D. FLATTERY & M. SCHWARTZ, HAOMA AND HARMALINE: THE BOTANICAL IDENTITY OF THE INDO-IRANIAN SACRED HALLUCINOGEN "SOMA" AND ITS LEGACY IN RELIGION, LANGUAGE AND MIDDLE-EASTERN FOLKLORE (1989); SMITH, CLEANSING THE DOORS OF PERCEPTION: THE RELIGIOUS SIGNIFICANCE OF ENTHEOGENIC PLANTS AND CHEMICALS 46 (2000) (identifying "Wasson's * * * candidate [as] the strongest in the field"), the key point remains that an entheogen was central to practices that led in time to Hinduism and Buddhism.

3. *Teonanacatl*, Mesoamerica's Sacred Mushroom

Deep into pre-Columbian times, Mesoamerican peoples made extensive ritual use of certain mushrooms. de Rios, *The Influence of Psychotropic Flora and Fauna on Maya Religion*, 15 CURRENT ANTHRO. 147, 148 (1974). Mushroom stone artifacts found in Guatemala and southeastern Mexico date as far back as 1,500 B.C.E. Schultes, *Hallucinogens of Plant Origin*, 163 SCIENCE 245, 246 (Jan. 17, 1969) ("Archeological 'mushroom stones' indicate that a sophisticated mushroom cult existed in Guatemala 3500 years ago"). The Spanish conquerors found the mushrooms, what the Aztecs called *teonanacatl* or "divine flesh," to be of deep importance to indigenous religious life and attempted to suppress their use. *Id.*; Schultes, *An Overview of Hallucinogens in the Western Hemisphere*, in FLESH OF THE GODS: THE RITUAL USE OF HALLUCINOGENS 9 (P. Furst, ed. 1972) ("Several reports from the early years after the Conquest tell of the deep importance of the intoxicating mushrooms to Mexican religion and life").

In 1955, Gordon Wasson rediscovered among the Mazatec people in Oaxaca, Mexico the ritual use of entheogenic mushrooms. He provided specimens to the chemist Albert Hofmann, who isolated from them the psychoactive chemical psilocybin (now a Schedule I controlled substance). V. WASSON & R.G. WASSON, MUSHROOMS, RUSSIA AND HISTORY (1957). These mushrooms are now known to be employed in divination, healing, and worship among the Mazatec, Chinantec, Chatino, Mije, Zapotec, and Mixtec of Oaxaca; the

Nahua and possibly the Otomi of Puebla; and the Tarascana of Michoacan. R. SCHULTES, A. HOFMANN & C. RÄTSCH, PLANTS OF THE GODS: THEIR SACRED, HEALING AND HALLUCINOGENIC POWERS 158 (2001). Contemporary sacred mushroom use is centered among the Mazatec in Mexico, where it is used in an all-night vigil with a *curandera* or *curandero* presiding and chanting, seeking visions or divine guidance, usually for healing purposes. *Id.* at 159.

4. The Huichol Pilgrimage and the Native American Peyote Meeting

The Huichol Indians of Mexico place great importance on periodic lengthy pilgrimages in search of peyote, during which seekers confess, undergo purifications, make offerings, and endure many hardships. The peyote gathered is used in vision questing ceremonies with tearful reverence and gratitude. See Furst, *To Find Our Life: Peyote Among the Huichol Indians of Mexico* in FLESH OF THE GODS at 154-84.

Peyote has been used in Mesoamerica for at least 2,000 years and likely much longer. See Schaeffer, *The Crossing of the Souls*, in PEOPLE OF THE PEYOTE: HUICHOL INDIAN HISTORY, RELIGION, & SURVIVAL 141 (B. Schaeffer & P. Furst, eds. 1996). Though the conquering Spanish tried to eliminate it, see, *e.g.*, ONE NATION UNDER GOD: THE TRIUMPH OF THE NATIVE AMERICAN CHURCH 169 (H. Smith & R. Snake, eds. 1996) ("Inquisitional persecution of Mexican Indian peyotists included torture and death"), the practice continues today.

The peyote practices of Mesoamerica migrated north, acquiring the distinctive forms of what is now the Native American Church ceremony. NAC members sometimes call the peyote sacrament "medicine" and understand it to have powerful healing ability. See ONE NATION at 31-73. Participants in an all-night NAC meeting, under the guidance of a presiding elder, ingest peyote or peyote tea, pray, and sing traditional songs, concluding with breakfast. *Id.* at 77-101. As Congress has recognized, the "traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been

integral to a way of life, and significant in perpetuating Indian tribes and cultures." 42 U.S.C. § 1996a; see also 21 C.F.R. § 1307.31.

5. Sacramental Iboga Among the Bwiti

A 150-year-old syncretic sect called Bwiti, centered in the West African Republic of Gabon, uses as its entheogenic sacrament the root bark of Tabernanthe iboga. The botanical and its chemical principle, ibogaine, are Schedule I controlled substances. The Bwiti use iboga in two distinct ways. Members are initiated into a Bwiti congregation through an intensive several-day ritual, in which large amounts of the sacrament are given, intended to provide a death-rebirth experience and spiritual contact with ancestors. J. FERNANDEZ, BWITI: AN ETHNOGRAPHY OF THE RELIGIOUS IMAGINATION IN AFRICA 483-90 (1982). Much smaller amounts of iboga are taken in regular community "masses," where it "substitutes [for] the host of the Catholic mass, in practice and concept." Samorini, *The Bwiti Religion and the Psychoactive Plant Tabernanthe Iboga*, 5 INTEGRATION 105, ¶14 (1995), available at www.samorini.net/doc /sam /bui_int.htm (internet text is not paginated). These night-long ceremonies are times of song, dance, and joy, in which the congregation "experiences a collective flow of emotions resulting in what the Bwitists call *mlem myore* ('one heart only')" and a scholar has termed "a state of symbolic consensus." *Id.* at ¶26.

Colonial missionaries attempted to suppress the Bwiti between 1920 and 1940, destroying temples and killing religious leaders. But when Gabon became an independent republic in 1960, a Bwitist, Leon Mba, became its first President, giving the Bwiti nearly the status of a state religion. See *id.* at ¶¶12-13. The practice has extended into other West African countries, including Cameroon, Congo, Zaire, and Equatorial Guinea. *Id.* ¶8.

6. Amazonia's *Ayahuasca*

For longer than recorded history, indigenous Amazonian peoples have used a class of plant-based entheogenic brews, generically called *ayahuasca*, for divination, healing, and worship. J. OTT, PHARMACOTHEON: ENTHEOGENIC DRUGS, THEIR PLANT SOURCES AND HISTORY 207 (1993). In the early 1900s, some Amazonian *ayahuasca* practitioners migrated to the cities of Brazil, where their traditional practices blended with Christian beliefs and gave rise to syncretic *ayahuasca*-using religions. The UDV, which stands in this lineage, calls its sacrament *hoasca*.

After multi-disciplinary expert review, the Brazilian government granted permission, provisionally in 1986 and permanently in 1992, for the religious use of *ayahuasca* and its constituent plants. This legal religious use in Brazil would presumably improve the visibility of problems associated with *ayahuasca*, if any. And yet it is not known as problematic, either for practitioners or for the general public. Riba, et al., *Subjective Effects and Tolerability of the South American Psychoactive Beverage Ayahuasca in Healthy Volunteers*, 154 PSYCHOPHARMACOL. 85 (2001); Grob, et al., *Human Psychopharmacology of Hoasca, A Plant Hallucinogen Used in Ritual Context in Brazil*, 184 J. NERV. & MENTAL DISEASE 86 (1996); Pet. Br. 13a.[3]

[3]Although these sketches confirm the quintessentially religious character of the UDV's practices, it would be a serious distortion to treat this evidence as supporting claims of a wave of entheogenic sects massed at the Nation's borders. Religions that have not been practiced for millennia or are practiced in distant corners of the world without any U.S. presence would, in any event, be thin material from which to fashion a "slippery slope" argument. But as we explain below, were adherents of such religions to arrive in this country and seek exemption for their practices, their claims should be evaluated, as UDV's has been (and as Congress directed such claims must be), on their actual, specific facts.

B. Like Other Intensive Religious Practices, the Sacramental Use of Plant Entheogens Has Deep Spiritual Significance.

Generally, the goal of intensive religious practices is to occasion direct experience of the divine or other types of spiritual awareness. Such states, in their higher forms, in their higher forms, "point in directions to which the religious sentiments even of non-mystical men incline. The supernaturalism and optimism to which they would persuade us may, interpreted in one way or another, be after all the truest of insights into the meaning of this life." W. JAMES, VARIETIES at 328.

These experiences, whether occasioned by entheogenic plants, meditation, fasting, or other intensive religious practices, are not always or even usually pleasurable; instead, they can be overwhelming and frightening. But there can be no doubt of the importance of such experiences to those who have them. See, *e.g.*, Roberts & Hruby, *Toward an Entheogen Research Agenda*, 42 J. HUMANISTIC PSYCH. 71, 78 (2002) ("From their own experiences and based on reports of others, hundreds of investigators claim that under the right set and setting, entheogens can produce genuine religious experiences").

UDV's aim in using *hoasca* during its services is to bring about enhanced states of spiritual awareness. UDV uses *hoasca* as a "link to the divinities" and as a sacrament – "a holy communion." 342 F.3d at 1174. For this reason, the very use of the terms 'hallucinogen' or 'drug' to describe UDV's sacrament is prejudicial.

C. Using the Terms 'Hallucinogen' and 'Drug' in Describing UDV's Use of *Hoasca* Risks Denigrating Its Religious Character.

The term 'hallucinogen' can carry the implication that the religious awareness, insights, or revelations experienced under a substance's influence are delusional or false. This

description, of course, is disrespectful to practitioners who experience their sacrament as bringing them closer to God – or as revealing religious truth.

It is not surprising that people take very seriously disagreements about what can actually bring them closer to the divine. Over the centuries, disputes over the efficacy of various sacraments have led to bloody sectarian conflict and brutal persecution. Our own constitutional tradition, however, demands that such disagreements not be settled by force or majority vote, but instead are left to the prerogative of diverse spiritual communities and individual consciences. The government, in short, is not permitted to deem a particular religion or its practices false. See *Employment Div., Oregon Dep't of Human Res. v. Smith*, 494 U.S. 872, 877 (1990).

Like 'hallucinogen,' the term 'drug,' used outside of medical contexts, often carries deeply pejorative meanings. Large sums of public and private money have been spent to bolster public awareness of the grave problems of drug abuse – *e.g.*, campaigns advising "Just Say No" to drugs. The UDV's sacramental use of *hoasca*, however, bears no resemblance to drug abuse.

For just these reasons, the federal government and the U.S. military have distinguished between "drug" use, on the one hand, and sacramental use of peyote, on the other. Regulations pursuant to the American Indian Religious Freedom Act expressly condone the "*nondrug*" use of peyote. 21 C.F.R. § 1307.31 (emphasis added). For its part, the military has determined that peyote use within Native American ceremonies is compatible with military service. Memorandum from F. Pang, Assist. Sec. Def. (Force Mgm't Policy) to Secretaries of the Military Departments (Apr. 25, 1997), available at www.chaplain.navy.mil/Attachments/DoD_Peyote_Guidance .pdf (providing interim guidance, still in effect, allowing religious use of peyote by Native American service members). A spokesperson for the Pentagon explained that if Native Americans are "using peyote in their religious practices, *it's a sacrament, not a drug*, just as sacramental wine is not considered a drug." Mendoza, *American Indian Troops Allowed to Use Peyote; Military Will Permit*, Austin American-Statesman, Apr. 16, 1997 at A2 (emphasis added).

The federal response to the religious use of peyote illustrates the need to distinguish between the religious use of plant entheogens, like peyote and *hoasca*, versus non-religious uses. For this reason, a growing number of religious scholars, anthropologists, and historians prefer the term *entheogen* to refer to the plant hallucinogens. See n.1, *supra*; OTT, PHARMACOTHEON at 104-105; Ruck, et. al., *Entheogens*, 11 J. PSYCHEDELIC DRUGS 1 (1979) (explaining that the word derives from Greek root "entheos," meaning "god (*theos*) within'").

Because there are important differences between religious and other uses of entheogenic plants and because *entheogen* does not evoke the same negative associations as 'hallucinogen' or 'drug,' *Amici* believe *entheogen* is a more appropriate term to describe *hoasca*, as well as peyote, particularly in religious contexts.

II. The Relatively Low Risks Associated with UDV's *Hoasca* Use Are Dissimilar from Those of Addictive Drugs, Well Minimized in UDV's Practices, and Are No Greater Than Risks Associated with Many Other, Permitted Intensive Religious Practices.

A. Unlike Addictive Drugs, The Physiological Risks Associated with DMT and *Hoasca* Are Modest.

DMT and similar entheogens present notable risks. *Amici* do not suggest otherwise. The risks, however, are primarily psychological and behavioral, not medical.

As a class, hallucinogens show virtually no risk of addiction: *Amici* are aware of no studies suggesting that plant hallucinogens are addictive, nor has the government cited any. See J.A. 338-39; Schuster, *Preclinical and Clinical Pharmacology of Psychoactive Drugs Used In Spiritual*

Practices, in *Symposium on Hallucinogens and Religion*, at 117.[4] Nor are we aware of any evidence that, as ordinarily used, they cause "damage to any human body organ." J.A. 338-39. These features sharply distinguish them from drugs of abuse such as cocaine, heroin, and alcohol – the last of which, of course, is widely used in Jewish and Christian religious ceremonies.

Hoasca does have physiological effects. These are minor, however, as the government implicitly concedes. The possible effects cited by the government – "cardiac irregularities," "intestinal cramps," "vomiting," and "diarrhea," Pet. Br. 35 – while not completely inconsequential, are associated with many substances and activities – including coffee and strenuous exercise, and it would be odd, to say the least, to describe the government's interest in preventing such common and relatively mild potential consequences as "compelling."

There is a risk of adverse drug interactions among those who ingest *hoasca* while taking certain medications, such as antidepressants. See 342 F.3d at 1180-81. While the adverse effects of such interactions can, in some instances, be serious, such risks are present with many drugs, both prescription and non-prescription, and with some common foods. Indeed, an expert for the government testified he would be more worried about interactions between antidepressants and grapefruit juice than between antidepressants and *hoasca*. Pet. App 223a. The established way of addressing such interaction risks is not by

[4]As Schuster, the former Director of the National Institute on Drug Abuse, explained, drugs that are commonly abused by humans tend to be self-administered by animals in experimental settings."In contrast[,] none of the 'classical hallucinogenic' agents have been shown to be self-administered by animals." *Id.* Rather, evidence suggests that "hallucinogens are aversive in animals and will serve as negative reinforcers." *Id.* The differences are "due to the fact that the classical hallucinogens have a different profile of pharmacologic effects * * * compared to drugs such as heroin, cocaine, and alcohol." *Id.* Instead of producing the type of euphoria associated with the latter, those who ingest drugs such as "mescaline, psilocybin or the ayahuasca tea * * * frequently show nausea, vomiting, and diarrhea." *Id.*

categorically banning one of the substances, but by providing information and warnings to potentially affected individuals.

Although Petitioners attempt to suggest otherwise, Pet. Br. 35-36, the government failed to show that there are serious physiological risks involved in the religious use of *hoasca*. As Judge McConnell correctly pointed out, the government's evidence "demonstrates only that there *might* be some adverse health consequences or risks" to those who participate in UDV's ceremony. See 389 F.3d at 1026.

Hoasca and similar entheogens do present some behavioral and psychological risks. Because entheogens alter perceptions, the altered states may, in the absence of supervision, lead to behaviors harmful to the individual or others. Just as driving under the influence of alcohol, for example, increases the chances of the driver injuring himself and others, so, too, would driving under the influence of *hoasca*.

Entheogens are used religiously (like other intensive practices, see *infra*) precisely because they can alter mood, perception, and cognition to lesser or greater degrees. The changes can be uplifting or troubling. Because some participants are less prepared (by way of experience, training, or fortitude) than others for navigating this terrain, the protective qualities of the religious context are especially important.

B. UDV's Religious Context and Practices Serve to Mitigate and Control These Risks.

Since the risks of hallucinogen use are almost exclusively psychological and behavioral rather than organic, the setting of use is a crucial determinant of the level of those risks. A substance and dose that might be highly risky in haphazard use or with an ill-prepared subject might be quite safe in a different use context.

UDV's religious ceremony is "guided" and "calm," 342 F.3d at 1181, led by those who are experienced, trained, and titled within the religion. This supervision, and the ceremonial

setting, minimize the risk that participants will engage in harmful behavior while under the influence of *hoasca*. It is further protective that dosage is controlled by an experienced and responsible person, and the UDV's religious strictures against drinking to excess and using illicit drugs virtually eliminates the risks associated with polydrug abuse.

The use of *hoasca*, moreover, is embedded within a set of religious beliefs. This, along with the guidance of religious leaders, minimizes the psychological risks of drinking *hoasca*. It helps participants derive religious benefit from the spiritual states of awareness they may experience, instead of being confused or destabilized by them.

Indeed, the former Director of the National Institute on Drug Abuse has distinguished the use of entheogens in religious ceremonies from the abuse of hallucinogens in the 1960s on just these grounds, emphasizing that the proper "set and setting" make it much more likely that the individual will experience a "spiritual epiphany," rather than anxiety or disorientation. See Schuster, *Psychoactive Drugs Used in Spiritual Practices* at 118.

While the government asserts that the use of *hoasca* is dangerous because it increases the risk of psychotic episodes, it must acknowledge that there are very few reported instances of such incidents associated with ceremonial *hoasca* usage, and that the vast majority of those (all of which occurred in Brazil) involved individuals with pre-existing mental illnesses. Pet. Br. 35. Moreover, evidence in the record indicates that "the reported very low occurrence of psychosis among church members in Brazil is equal or less than the rate in the general population." 342 F.3d at 1181. See also B. SHANNON, THE ANTIPODES OF THE MIND: CHARTING THE PHENOMENOLOGY OF THE AYAHUASCA EXPERIENCE 329 (2002) (reporting that "psychotic outbreaks associated with Ayahuasca do not exceed the overall rate commonly found in the [Brazilian] population at large").

C. The Permissible Religious Use of Peyote Provides an Instructive Example

In significant ways, UDV's use of *hoasca* is similar to the Native American Church's use of peyote. Both groups use plants that contain substances subject to the Controlled Substances Act's most severe restrictions. While peyote, like *ayahuasca*, has little or no organic toxicity and carries negligible addiction risk, it is a powerfully psychoactive plant, not without behavioral and psychological risks, see Bergman, *Navajo Peyote Use: Its Apparent Safety*, 128 AM. J. PSYCHIAT. 695 (1971) – especially when ingested outside the religious context.

Notwithstanding these risks, both Congress, by statute, and the military, by regulation, have concluded that peyote use within traditional religious contexts is safe enough to allow, and their judgments have been vindicated by the absence of any substantial reported harm from the practice. See Bergman. Neither the scientific literature nor the evidence presented in this case provides any reason to think that offering similar accommodation for the use of *hoasca* by the UDV would have a different result.

Amici are aware of the special legal status of Native Americans and of the complicated history of the administrative and legislative exemptions granted them for religious peyote use. But these distinctions do not detract from the chief import of this example for this case. It refutes the government's sweeping claim that a substance's placement on Schedule I should be treated as expressing a judgment that it is unacceptably dangerous under all conditions, including in religious ceremonies. 389 F.3d at 1022 (Opinion of McConnell, J.). And just as the real risks of peyote use are substantially (and acceptably) minimized by the protections inherent in religious use, so, too, are the risks associated with *hoasca* use.

Instructive in this regard are views expressed by Herbert Kleber, who served as Deputy Director of the White House

Office of National Drug Control Policy under President George H.W. Bush and is currently Director of the Division of Substance Abuse at Columbia University's College of Physicians and Surgeons. After acknowledging both the behavioral dangers associated with hallucinogens and their potential "to lead to useful insights [and] positive behavioral change," see *Symposium on Hallucinogens and Religion*, at 123, Dr. Kleber addressed the conflict between protecting religious practice and the need to prevent drug abuse, proposing that "the current position that permits bonafide members of the Native American Church to use peyote in a controlled communitarian setting may serve as a useful model and *could be expanded*," but that "use by individuals in a non-communitarian setting creates too much risk at this time, as does permitting use by pseudo-religious groups whose only purpose is the drug use." *Id.* (emphasis added).

D. Many Accepted, Intensive Religious Practices Entail Risks of Harm That Are Comparable to or Greater than Those Associated with UDV's Use of *Hoasca*.

The UDV's use of *hoasca* is not risk-free, but the same is true, of course, of nearly any activity. The key question is not whether the use of *hoasca* carries *any* risk of harm, but whether the risk in ritual use is grave enough to prohibit UDV's members from practicing their religion. In considering this question, it is useful to recognize that many accepted and permissible religious practices involve *some* risk of harm to participants. It is difficult, of course, to compare all these risks with scientific precision. At the same time, however, as the descriptions and studies below indicate, the risks certainly seem comparable to, and in some instances surely more serious than, those associated with the UDV's ceremonial *hoasca* use.

1. Refusal of Medical Treatment

Many Jehovah's Witnesses and Christian Scientists, to cite two examples, refuse some or all medical treatment. Jehovah's Witnesses refuse blood transfusions "out of obedience to the scriptural directive to abstain and keep from blood." Ridley,

Jehovah's Witnesses Refusal of Blood: Obedience to Scripture and Religious Conscience, 25 J. MED. ETHICS 469 (1999). Spiritual healing, *i.e.*, through prayer alone, is central to the practice of Christian Science. Although the Christian Science Church does not teach that accepting medical care is wrong or sinful, faithful adherents regularly refuse medical care, out of belief that "reliance on medical treatment clearly departs from the practice of Christian Science." CHRISTIAN SCIENTISTS AND THE PRACTICE OF SPIRITUAL HEALING 51 (1991). In so doing, members of these religious groups rely on the settled right of a competent, adult patient to refuse medical treatment, which is protected by statute, see *Vacco v. Quill*, 521 U.S. 793, 804 (1997), recognized at common law, *Cruzan v. Director, Mo. Dept. of Health*, 491 U.S. 261, 277 (1990), and presumptively protected by the Due Process Clause of the United States Constitution, see *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (noting that the Court has "assumed, and strongly suggested, that the Due Process Clause protects the tradition right to refuse unwanted lifesaving medical treatment").

It perhaps goes without saying that refusing medical care creates risks of harm, including death, that dwarf any associated with the religious use of *hoasca*. That this protection is afforded non-religiously-motivated, as well as religiously-motivated treatment refusals does not diminish the force of the example. On the contrary, it confirms that the law broadly respects individual decisionmaking concerning health risks for personal reasons, both religious and secular. (Of course, countless people are injured and even killed each year engaging in activities such as mountain climbing, deep sea diving, skiing, and high school football – risks presumably far more serious than anything the government has even claimed in this case. Yet society and the law do not view those risks as sufficient to justify banning all risky recreation, and the quite modest risks that might accompany UDV's practices are not a compelling reason to ban an exercise of religion.)

2. Meditation

A number of Eastern religions, including Buddhism, incorporate meditation as a spiritual exercise. Similarly, many Catholics still participate in the Spiritual Exercises of St. Ignatius of Loyola, which in their full form involve four weeks of intensive prayer and meditation. *The Spiritual Exercises of Ignatius Loyola*, available at www.faculty.fairfield.edu /jmac/se/se.htm; Father Elder Mulan, S.J., *The Spiritual Exercises of St. Ignatius of Loyola*, available at www.jesuit.org/images /docs/915dWg.pdf. Practitioners of these exercises, like UDV members, seek a closer connection to the divine. Practitioners of meditation, in particular, report sensations during deep meditation that are similar to those achieved through the religious use of *hoasca* and peyote, including feelings of equanimity, detachment, and perceptual distortion. M. MURPHY & S. DONOVAN, THE PHYSICAL AND PSYCHOLOGICAL EFFECTS OF MEDITATION: A REVIEW OF CONTEMPORARY RESEARCH WITH A COMPREHENSIVE BIBLIOGRAPHY, 1931-1996 (1997), ch. 4 available at www.noetic.org/research/ medbiblio /ch4.htm (page references to internet version).

Intensive meditation, however, is not without risks. A 1992 study of 27 long term meditators, for example, reported such adverse effects as depression, relaxation-induced anxiety and panic, paradoxical increases in tension, impaired reality testing, confusion, and disorientation. Shapiro, *Adverse Effects of Meditation: A Preliminary Investigation of Long-Term Meditators*, 39 INT'L J. PSYCHOSOMATICS 62 (1992). Other studies report such negative reactions as "mild disassociation," "destructive behaviour" and even "suicidal feelings." Perez-De-Albeinz & Holmes, *Meditation: Concepts, Effects, and Uses in Therapy*, 5 INT'L J. PSYCHOTHERAPY 49, 53 (2000). Feelings and memories once forgotten or buried can appear during meditation in "intense, vivid forms," which in turn can create a risk of psychological harm. *Id.* at 54.

Not surprisingly, meditation, just like the religious use of *hoasca*, poses greater dangers to those who have significant pre-existing maladies. Thus, studies have found that "meditation may precipitate a psychotic episode in individuals with a history of schizophrenia," MURPHY & DONOVAN, Ch. 4, p. 6; that it can lead "some individuals to become even more obsessive-compulsive than they had been," *id.*; and that intensive meditation may induce "psychotic manifestations with hallucinatory behavior" and "severe depression and schizophrenic breakdown," *id.*

Amici, of course, do not mean to disparage meditation or to question its benefits. But this generally beneficial religious practice undoubtedly entails some risks, which vary depending on the individual. Indeed, the risks involved with meditation are sufficiently significant that some meditation centers require participants to sign liability release forms. One leading center requires participants to sign a form expressly acknowledging the "intense and unusual psychological, spiritual, and/or physical states of mind and body arising from the meditation," and to accept responsibility for "any and all risks of harm that may result from" the experience. Spirit Rock Meditation Center Liability Release Form, available at www.spiritrock.org/PDFs/9_18-25_05Reg.pdf.

3. Fasting

Many religious traditions, including Judaism, Christianity, Buddhism, Hinduism, and Islam, encourage or require adherents to participate in days of fasting. Muslims, for example, are expected to fast for an entire month during Ramadan, the most holy month in the Islamic calendar. During Ramadan, Muslims abstain from eating and drinking from dawn to sunset, customarily eating a light meal before dawn and a larger meal after sunset. A recent review of empirical studies on the effects of this fasting found that it causes dehydration and attendant "tiredness and malaise, headaches and nausea," as well as a "lack of concentration" which can "have negative effects on the working and school life of

individuals," and that these effects are especially pronounced in middle-aged and elderly individuals. See Toda & Morimoto, *Ramadan Fasting – Effect on Healthy Muslims*, 32 SOCIAL BEHAVIOR & PERSONALITY 13, 14-17 (2004).[5]

4. Drinking Alcohol

The use of alcohol in religious ceremonies is widely known and a common experience for practicing Christians and Jews. The Jewish holiday of Purim, for example, "is a day of 'feasting and joy' which *requires* the drinking of alcohol." Alder, *Drinking on Purim: When to Say When*, 40 JUDAISM 6 (Winter 1991) (emphasis added). Just how much alcohol should be consumed is a matter of disputation among religious scholars, with some interpreting the Talmud to command consumption to the point of drunkenness. *Id.* at 6-7. The Passover Seder, moreover, traditionally requires participants to drink four full cups of wine. THE BABYLONIAN TALMUD: PESAHIM 532 (I. Epstein, ed., H. Freedman, trans., Soncino Press 1938). Drinking such substantial quantities of alcohol creates obvious and well-known risks, including behavioral risks like drunken driving.

The sacramental use of wine in Catholic ceremonies involves quantities of alcohol obviously too small to produce intoxication. But even small amounts of alcohol may present real risks to those who are already alcoholics. Owen & Marlatt, *Should Abstinence be the Goal for Alcohol Treatment?*, 10 AM. J. ADDICTIONS 289 (2001) ("For most people who are dependent on alcohol, abstinence is the safest course and most honest treatment goal"). Only the Holy See can grant exceptions to this form of sacrament to lay persons. Cardinal Joseph Ratzinger, Prefect, *Norms for Use of Low Gluten Bread and Mustum*, Congregation for the Doctrine of the Faith, Aug. 22, 1994, available at www.ewtn.com/library/CURIA/CDFMUSTM. HTM ("In the very rare instances of laypersons

[5]Some risks are not limited to the religious practitioners themselves. An increase in traffic accidents has been reported during Ramadan and attributed to less attentive driving by those engaged in the fast. *Id.* at 16.

requesting this permission, recourse must be made to the Holy See").

5. Mortification of the Flesh

Some Catholics, particularly those who are members of tradition-minded orders and organizations, practice corporal mortification. The official doctrine of the Opus Dei recommends regular mortification of the flesh. D. LE TOURNEAU, WHAT IS OPUS DEI? 81 (1987) ("In addition, every member should maintain a spirit of mortification and penance, including corporal mortification, according to the age, health and circumstances of each"); Ostling, *Opus Dei Priest Defends Self-Punishment*, Augusta Chron., July 30, 2005, at D04; see also Opus Dei and Corporal Mortification, available at www.opusdei.org/ art.php?w=32&p=9316.

Two forms of this self-punishment are the cilice (also known as the catena) – a spiked metal belt strapped around the upper thigh or stomach – and the discipline (or flagellum), "a small whip of cords with which one might strike one's back to realize the pain of the suffering of Christ." Most Rev. Robert C. Morlino, *The Da Vinci Code: Serious Cautions About this Book*, Madison Catholic Herald, Dec. 18, 2003, available at www.catholiccollegestudents.org/femorlino.html.

The intentional self-infliction of pain obviously carries risks of both physical and mental harm. Adherents nonetheless believe that this practice – which is undoubtedly foreign to many with secular and modern sensibilities – has great spiritual benefits. Following a long and fairly diverse religious tradition, they believe that suffering can bring one closer to God. In some practices, pain is seen as useful in and of itself as a physiological focusing or consciousness-altering aid. See generally A. GLUCKLICH, SACRED PAIN: HURTING THE BODY FOR THE SAKE OF THE SOUL (2001).

6. Circumcision

Circumcision of newborn males is performed for both secular and religious reasons. Like many medical procedures, it carries not only benefits, but risks, as well. These include adhesions, urinary tract infections, hemorrhage, and acute renal failure. Bliss, et. al., *Necrotizing Fasciitis After Plastibell Circumcision*, 131 PEDIATRICS 459 (1997); Distel, et al., *Primary Genital Herpes Simplex Infection Associated With Jewish Ritual Circumcision*, 5 ISR. MED. ASS'N J. 893 (2003).

In the Jewish tradition circumcision is typically performed by a *mohel*, often in the family's home – a practice that has been found to be riskier than having the procedure performed by a physician in a medical setting. See Straussberg, et al., *Influence of Circumcision Technique On Frequency of Urinary Tract Infections in Neonates*, 21 J. PEDIATRIC INFECT. DIS. 879 (2002). Indeed, the traditional practice can be fatal, as the government's own witness testified, in the very rare (though documented) instances when the infant has hemophilia. J.A. 925-26.

7. Pilgrimages and Missions

Numerous religious traditions require adherents to undertake pilgrimages, many of which involve arduous and sometimes dangerous journeys. See Turner, *Pilgrimage: An Overview*, 10 ENCYCLOPEDIA OF RELIGION at 7145 (observing that pilgrimage involves resolution to journey to distant holy place such as "Banaras, India (Hindu); Jerusalem, Israel (Jewish, Christian, Muslim); Mecca, Saudi Arabia (Muslim); Meiron, Israel (Jewish); Ise, Japan (Shinto), Saikoku, Japan (Buddhist); or one of a hundred thousand others"). Still others, like those in the Mormon tradition, are required to act as missionaries, sometimes in difficult and dangerous circumstances. See, *e.g.*, Loftin, *LDS Missionaries Leave Haiti For Safety*, The Deseret News, June 11, 2005 at A8; Murphy, *Service to Remember Slain Missionary's Life*, The Republican,

June 8, 2005 at CP15 (describing killing of nun whose order worked in Brazil "in very difficult and often dangerous circumstances").

8. Summary

This collection of examples is not meant to be exhaustive. It could easily be expanded to include other religiously motivated conduct, such as giving away one's possessions and living in poverty, which carries numerous risks to a person's health and well-being. See Fraser, *Protected From Their Own Beliefs: Religious Objectors and Paternalistic Laws*, 18 B.Y.U. J. PUB. LAW 185, 196 (2003). These examples nonetheless suffice to establish the point: many religious practices, across numerous faiths, which are accepted and lawful, create some risk of harm for the individual practitioners. At the same time, these practices bestow spiritual benefits that those outside of the particular tradition might have trouble comprehending. The religious use of *hoasca* is no different in either regard, except that the risks involved are almost certainly less serious than many associated with lawful religious (and secular) practices.

This leads, finally, to the single point of law that *amici* wish to advance:[6]

III. The Federal Government Does Not Have a Compelling Interest in Prohibiting a Religious Practice that Entails a Relatively Low Risk of Harm.

The Religious Freedom Restoration Act (RFRA) prohibits the federal government from substantially burdening a person's free exercise of religion unless the "application of that burden to the person" furthers a compelling interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1. The federal government concedes that prohibiting

[6]Given their interests and expertise, *Amici* confine this submission to the question whether the government has a compelling interest in prohibiting the use of *hoasca*, based on risks posed to UDV practitioners. *Amici* endorse and support Respondents' arguments (supported by the courts below) concerning the government's other asserted grounds for suppressing UDV's practices.

the sacramental use of *hoasca* imposes a substantial burden on the sincere exercise of religion by UDV members. See 342 F.3d at 1173. Indeed, as the discussion above indicates, prohibiting the sacramental use of *hoasca* would devastate the sincerely religious practices of UDV.

The only issue, therefore, is whether the federal government, which bears the burden of proof on this issue, 42 U.S.C. § 2000bb-2, can demonstrate a compelling interest to justify the ban. RFRA does not define what constitutes a "compelling governmental interest." Instead, it explicitly incorporates the compelling interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). 42 U.S.C. § 2000bb-1. *Yoder* makes it plain that "only those interests of the highest order" will outweigh "legitimate claims to the free exercise of religion." 406 U.S. at 215.

Prohibiting consenting adults from incurring some risk of harm to themselves in the context of religious rituals or practices does not, in itself, serve a governmental interest "of the highest order." *Id.* Although religious believers and practitioners have no license to invade the rights of others or to disturb public peace and order, where the rights of others are not threatened, the government's interest is substantially diminished.

As then-Professor McConnell has argued, in the context of reviewing the original understanding of the Constitution's Free Exercise Clause, the government generally does not have a compelling interest in protecting religious persons "from the consequences of their own religious choices." McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. CHI. L. REV. 1109, 1145 (1990). See also A. AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 43, 255 (1998) (suggesting that "some religious practices that affect only the religious community itself (with no externalities imposed on religious nonbelievers)" should be constitutionally immunized from regulation); accord McConnell & Posner, *An Economic Approach to Issues of Religious Freedom*, 56 U. CHI. L. REV. 1, 47-48 (1989).

But allowing the UDV to continue to practice its religion does not depend on the Court's construing RFRA to impose a rule of absolute religious libertarianism, nor one of pure anti-paternalism. As *Amici* recognize, some religiously-motivated practices may involve extreme dangers, and it is sometimes difficult to sort out issues of consent and potential effects on third parties. See generally Volokh, *Intermediate Questions of Religious Exemptions: A Research Agenda With Test Suites*, 21 CARDOZO L. REV. 595, 624-31 (discussing strength and weaknesses of proposal to prohibit government from interfering with religious practices on paternalistic grounds).

But *Amici* would urge that courts review paternalistic rationales for banning religious practice with a healthy skepticism and assess, carefully and dispassionately, the real risks involved in the specific practices at issue.[7]

To be sure, this places some pressure on judges to sift through those facts and data, but this is not an unusual or impossible task for judges. Indeed, the district court in this very case performed the task admirably. Just as important, moreover, it is a task that RFRA requires courts to perform. See 389 F.3d at 1020 (Opinion of McConnell, J.) ("Whatever our justifiably low opinion of our own competence, we are not free to decline to enforce [RFRA], which necessarily puts courts in the position of crafting exemptions to federal laws that burden religious exercise without sufficient justification."). Indeed, the statute's instruction to determine whether "*application of the burden to the person* furthers a compelling interest," 42 U.S.C. § 2000bb-1(b) (emphasis added) necessarily requires a close analysis of the asserted interest.

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[7]A central teaching of literature addressing government risk regulation is that both sound policy and appropriate judicial review of such regulations require attention to real facts and data, not popular opinion. See S. BREYER, BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION (1993) 33-51.

By undertaking to do so, courts fulfill one of the central purposes of RFRA: to ensure that minority religious practices are provided the same level of protection as more dominant, well-known, or popular ones. See, *e.g.*, S. Rep. No. 103-111 (1993) at 8. In enacting RFRA, Congress recognized that the legislative process cannot always be trusted to accommodate and respect the practices of minority religions. During the Prohibition Era, for example, Congress enacted an exemption for the shipment and use of wine for "sacramental purposes." See, *e.g.*, Act of February 4, 1917, ch. 53, § 8, 39 Stat. 903; Act of August 24, 1912, ch. 388, 37 Stat. 518, 519. It undoubtedly did so because the sacramental use of wine was (and is) a familiar and widespread religious practice. UDV's practices, by contrast, are not well-known or understood, and it is therefore unsurprising that they have not received an exemption from the general prohibitions of the Controlled Substances Act.[8]

RFRA counteracts this political problem by enacting a presumption that Congress intended an exemption from every federal law, see 42 U.S.C. §2000bb-3(a), for sincere religious practices, unless the government proves that curtailing (here, prohibiting) the exercise of religion is the only available means of achieving some truly compelling governmental objective. In order to determine whether an asserted rationale is sufficient, courts must necessarily look behind generalized claims that a prohibition on religious practice will spare believers some health or safety risk.

In this case, as the district court found, the evidence simply does not show that the government has a compelling interest in prohibiting the UDV's religious use of *hoasca*. The risks

[8]For the very political process reasons Congress acknowledged when it enacted RFRA, it is far more likely that the Legislative Branch will respond to a court decision *recognizing* an exemption to a law that Congress believes cannot survive with exceptions, than one *denying* a statutorily-contemplated exemption to a numerically small, poorly understood, or unpopular religious sect.

associated with the sacramental use of *hoasca* are, as explained above, comparable to those entailed by a large array of long- and widely-accepted religious practices. Before practices such as religious fasting, intensive meditation, mortification of the flesh, and pilgrimages could be prohibited on safety and health grounds, one would expect courts, pursuant to RFRA, to take a searching and justifiably skeptical look at the actual risks involved. That is precisely what the district court did here, and its conclusion that the government does not have a compelling interest in prohibiting the UDV's ceremonial use of *hoasca*, affirmed by the *en banc* Court of Appeals, should be affirmed.

Conclusion

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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SEPTEMBER 2005

APPENDIX

DESCRIPTIONS OF *AMICI CURIAE*

THE COUNCIL ON SPIRITUAL PRACTICES (CSP) is a collaboration among scholars of religion, spiritual guides, and experts in the behavioral and biomedical sciences. CSP studies primary religious experience, its antecedents, and its short- and long-term consequences, with the aim of helping individuals and spiritual communities bring the insights, grace, and joy that can arise from direct perception of the divine into their daily lives. CSP has organized conferences with researchers from the Johns Hopkins University, the University of California at Berkeley, the University of California at Los Angeles, the University of Pennsylvania, the University of Toronto, and the University of Tennessee to design and carry out such studies. One of those projects completed at a major medical center is now being readied for publication.

CARL A.P. RUCK, Ph.D, is Professor of Classical Studies at Boston University. With the ethnobotanist Gordon Wasson and the chemist Albert Hofmann, he first published the finding that the ancient Greek Mysteries at Eleusis achieved their profound impact through the use of an ergot psychoactive. He also led the team of scholars that coined and proposed the word 'entheogen.' He has written extensively on ancient Athenian dramatic festivals and the cultic practices of the god Dionysus, shamanism and the traditions of Greco-Roman philosophy, early Christian Gnosticism and its entheogenic Eucharist, and the visionary initiation into the warrior brotherhood of the Persian deity Mithras, which was the cohesive force that bound together the ruling elite and military force maintaining the Roman Empire.

HUSTON SMITH, Ph.D., holder of twelve honorary degrees, is Thomas J. Watson Professor of Religion and Distinguished Adjunct Professor of Philosophy, Emeritus, Syracuse University. For fifteen years he was Professor of Philosophy at M.I.T. and for a decade before that he taught at

Washington University in St. Louis. Most recently he served as Visiting Professor of Religious Studies, University of California, Berkeley. Smith's fourteen books include *The World's Religions*, for thirty years the most widely used textbook on comparative religion, and *Why Religion Matters*, which won the Wilbur Award for the best book on religion published in 2001. His documentary films on Hinduism, Tibetan Buddhism, and Sufism have all won international awards. In 1996, Bill Moyers devoted a 5-part PBS Special, *The Wisdom of Faith with Huston Smith*, to his life and work. Dr. Smith's recent books include *Cleansing the Doors of Perception: The Religious Significance of Entheogenic Plants and Chemicals* and *The Soul of Christianity*.

KENNETH B. SMITH, M.Div., D.D., served as President of the Chicago Theological Seminary from 1984 to 1998. He is now a Senior Fellow of the Chicago Community Trust. An ordained minister in the United Church of Christ, Dr. Smith has served on the Boards of the National Conference of Christians and Jews, the National Trust for Historic Preservation, and the AARP. He has served as Chair of the Council of United Church of Christ Seminary Presidents and as President of the Chicago School Board.

ROGER WALSH, M.D., Ph.D. is Professor of Psychiatry and Human Behavior in the School of Medicine and Professor of Philosophy in the School of Humanities at University of California, Irvine. His areas of expertise include the psychology of religion, the effects of meditation, and Asian psychologies and philosophies. He has also studied and written about shamanism, a form of experiential divinatory, healing, and spiritual practices and beliefs that predate the historical religions by many thousands of years. Walsh has authored over 100 books and peer-reviewed articles, and he serves on the editorial boards of the *Journal of Consciousness Studies* and the *Yearbook of Cross-Cultural Medicine and Psychotherapy*.